HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)

Description of case

W.P. No. 1110 year 2003 (M/S)
Bengal Engineer Group and Centre
Employees Union,
Versus
Registrar/Labour Commissioner,
Trade Unions, Uttaranchal

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date of decision 04.11.2003

Initials of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1110 of 2003 (M/S)

Bengal Engineer Group and Centre
Employees Union,
Through its General Secretary. ---Petitioner

Vs.

Registrar/Labour Commissioner, Trade Unions,
Uttaranchal, Haldwani and another. ---Respondents.

Mr. Gopal Narian, counsel for the petitioner,
Learned Standing Counsel for respondent.

Judgment Dated: November 4, 2003:

Hon'ble Rajesh Tandon J.

Heard Sri Gopal Narain, learned counsel for the petitioner and Sri Maulikhi, learned Standing Counsel for the respondent.

By the present writ petition, the petitioner has prayed for issue of a writ, order of direction in nature of certiorari quashing the order dated 5th February 2003 passed by the respondent No.1.

Brief facts giving rise to the writ petition are that the petitioner namely Bengal Engineer Group and Centre Employees is a Union of Civil Regimental employees of M/s Bengal Engineer Group and Centre Roorkee, Haridwar, namely, the respondent No.2.

The petitioner has filed an application for registration under Section 5 of the Trade Union Act 1926 of a Trade Union to the Registrar accompanied by his own consideration which has been annexed as annexure-1 to the writ petition. Paragraph-1(v) provides the name of the Union as under:-

1- v& ;fu;u dk uke--------cxky bathfu;l xqi ,.M lUVj bEiykbt ;fu;u

Clause-3 of the Constitution provides as under:-

;fu;u dk mnns'; fuEefyf[kr gksxk%&

1- cxky bathfu;l xqi ,.M lUVj :Mdh gfj}kj esa QkeZ Hkjus okyh QkeZdkjk@dekpkfj;k dh i'kkldh; ,oa lqijokt jh LVkQ esa ugh vkrs ,oa ftu ij ;0ih0 xouesUV dUMDV :y ykxw ugh gksrs rFkk vk?kkfxd fookn vf/kfu;e 1947 dh vrxZr dekpkfj;k dh ifjHkk"kk esa vkrs gksa dk lxBu gSA

Clause-4 provides the embership of the Union Known as "lnL; esa jthesUVy"

Counsel for the petitioner has stated that he has complied with the entire formalities in pursuance of the letter dated 27th August 2002 which was received from the office of the Registrar Trade Union, Haldwani and the requisite fee, as required by the Registrar has been submitted.

Counsel for the petitioner has stated that on 5th February 2003 a letter was received from the office of respondent No. 2 where it was mentioned that since there are 408 working employees and the total number of the members of the Union are 12 only and, therefore, the registration in accordance with section 4 is not possible as there should be minimum number i.e. 10 or 10% of the working employees.

Counsel for the petitioner has stated that immediately after receiving he aforesaid letter, the petitioner has clarified the same vide representation dated 24th March 2003 informing the respondent No.1 that there are two types of the employees in the establishment, one is civil permanent employees who are in total number of 408 and secondly Civil Regimental employee who are in total number of 90.

The petitioner has stated that the total membership, which has been given is 12 in regard to Civil Regimental employees. It is fully covered under the proviso of Section -4 of the Trade Unions Act 1926.

Counsel for the petitioner has stated that he has not been afforded any opportunity before passing of the order dated 5th February 2003.

Section-4 of the Trade Unions Act, 1926 provides the mode of registration which reads as under:-

"4.Mode of registration.-[(1) Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act.

[Provided that no Trade Union of workmen shall be registered unless at least ten per cent, or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration:

Provided further that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or

employed in the establishment or industry with which it is connected.]"

Section-11 of the Trade Unions Act, 1926 provides the filing of the appeal against the order of the Registrar refusing to register a Trade Union. Section-11 is quoted below:-

"11. Appeal. (1)Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal-

(a) where the head office of the Trade Union is situated within the limits of a Presidency town to the High Court, or

(aa) Where the head office is situated in an area, falling within the jurisdiction of a Labour Court or an Industrial Tribunal, to that Court or Tribunal, as the case may be;]

(b) where the head office is situated in any area, to such court, not inferior to the court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the [Appropriate Government] may appoint in this behalf for that area.

(2) The appellate court may dismiss the appeal. Or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9 or setting aside the order or withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order.

(3) For the purpose of an appeal under sub-section (1) an appellate court shall, so far as may be, follow the same procedure and have the same power as it follows and has when procedure and have the same power as it follows and has when trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and may direct by whom the whole or any part of the costs of the appeal shall be paid, and such costs shall be recovered as if they had been awarded in suit under the said Code.

(4) In the event of dismissal of an appeal by any court appointed under clause (b)of sub-section (1) the person aggrieved shall have a right of appeal to the High Court, and the High Court shall, for the purpose of such appeal, have all the powers on an appellate court under sub-sections (2) and (3), and the provisions of those sub-sections shall apply accordingly.]"

Since the alternative remedy is available to the petitioner under Section-11 of the act, no interference under Article 226/227 can be made in the writ petition.

Since the petitioner has already made a representation, being annexure No.-7 to the writ petition, he may file an appeal alongwith

the copy of the representation before the appellate authority who shall decide in accordance with procedure prescribed under Section-11 of the Act.

If the petitioner files the appeal alongwith the copy of the representation, which he has already filed, well within time, the appellate authority shall not reject the appeal on account of the fact that the appeal has been filed beyond time. The petitioner may prefer the appeal within a period of two weeks from obtaining certified copy of this order and the same shall be decided on merits by the appellate authority in accordance with law. The appeal shall be decided within a period of one month from the date of filing of the appeal.

With the aforesaid observations, the writ petition dismissed.

(Rajesh Tandon, J.)

NCM: